

Ravalli County Attorney

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TO: Board of County Commissioners
FROM: Bill Fulbright
DATE: May 25, 2012
RE: Commissioner J.R. Iman

This memo responds to the statements referred to my office alleging three possible standards of conduct violations by Commissioner Iman.

Background

On April 3, 2012, at 5:25 p.m., I received an email from Commissioner Kanenwisher, as Chairperson of the Board of County Commissioners ("BCC"), in which he described three situations that had been made known to him that might constitute violations of the Montana Code, Title II, Chapter 2 (Standards of Conduct) by Commissioner Iman. The referrals to my office were made pursuant to § 2-2-144, M.C.A., which requires the County Attorney to be notified of alleged violations of the standards of conduct by a local government officer, and directs me to "make a determination concerning the validity of the complaint." § 2-2-144(1), M.C.A.

On Friday, April 6, 2012, Commissioner Iman alerted me by phone that he was working on a response to the above email. On Wednesday, April 11, 2012, Commissioner Iman delivered to my office a five page written response and copies of various documents in support thereof. On Monday, April 16, 2012, I gave to the County Attorney Office's investigator, Pete Clarkson, the assignment of investigating the facts underlying each of the three allegations.

By this memorandum, I am reporting back to the BCC my conclusions on each of the allegations, and address each below in the order identified by Commissioner Kanenwisher.

1. Airport mower

The allegation is that Ravalli County rented a large mower from Commissioner Iman's family farm for use at the Ravalli County Airport, and questions the propriety of Commissioner Iman's participation in that process. (Commissioner Iman's family farm is Woodside Stock Farm, a Montana Corporation. Because this is a closely held corporation, there is no significant difference for this analysis between the owner(s) and the corporation. Therefore, I will refer to Commissioner Iman in this memo, not the corporation.) Our investigation has determined that:



In the spring of 2009 the airport was in need of a new large mower. Page Gough, the airport manager, proposed for the airport's FY 09-10 budget that the county purchase of a new mower for approximately \$10,000. However, even if the mower purchase was approved for FY 09-10, the airport was without the necessary equipment for spring 2009 mowing. Commissioner Iman offered Mr. Gough the opportunity to borrow a large mower from Commissioner Iman for the spring 2009 mowing. Mr. Gough used the mower without any compensation being paid to Commissioner Iman.

In the FY 09-10 budget hearings, the BCC then debated the purchase of the new mower. As an alternative to the capital investment, Commissioner Iman offered to rent his mower to the airport for mowing during the FY 09-10 budget cycle (spring 2010 mowing). Mr. Gough reported to the BCC that the rental rate suggested by Commissioner Iman, \$1,000 for the season, was much lower than any other rental he could locate. The BCC agreed in its budget hearing to defer purchase of a new mower and instead rent the mower from Commissioner Iman.

Of importance, it is apparent that Commissioner Iman's interest in this transaction was fully disclosed during discussions held in a public meeting. Mr. Gough, other then-sitting commissioners, and the county's CFO recall the budget hearing in which it was clearly understood that it was Commissioner Iman's mower. As continues to be BCC policy, detailed minutes were not maintained during each budget hearing. Rather, the investigation must rely on the recollection of those present. This \$1,000 rental line item was then included in the airport budget, which was formally approved by the BCC's vote to approve the overall county budget. Thereafter, on April 23, 2010, Ravalli County paid Commissioner Iman \$1,000 for use of the mower during the spring 2010 mowing season.

During the budget hearings for FY 10-11, the previously constituted BCC again decided to rent Commissioner Iman's mower for the spring 2011 mowing season. This decision was again made during a public budget hearing, in which Commissioner Iman's ownership of the mower was fully disclosed. On June 3, 2011, the county paid Commissioner Iman \$1,000 for the 2011 mowing season.

During the budget hearings for FY 11-12, as confirmed by the county's CFO, Commissioner Iman disclosed to the present BCC his ownership in the mower. After this disclosure and discussion, the present BCC again approved the rental for the current year. However, prior to the spring 2012 mowing season, Mr. Gough proposed the purchase of a new 12' bat wing mower. The BCC approved purchase of a mower at its March 13, 2012 BCC meeting, cancelling the proposed mower rental. During that meeting, Commissioner Iman again disclosed his interest in the rental arrangement, and recused himself from the vote. The BCC voted 4-0 to purchase the new mower.

Based on the above facts, I find that Commissioner Iman acted appropriately, fully disclosing his interest in the rental of the mower. The decision made by the BCC to rent Commissioner Iman's mower, instead of purchasing a new mower, and the value of the rental, were decisions made in a public meeting after disclosure of Commissioner Iman's interest in the transaction. Further, as required, Commissioner Iman abstained from the March 13, 2012 vote. The allegation that Commissioner Iman violated the standards of conduct required of local government officials is not justified.

By way of suggestion: In the future, to avoid having to rely on the memory of individuals involved, a good practice when any commissioner may have an interest in a particular transaction or line item in the budget might be: (1) keep specific written minutes of the disclosure and BCC discussions of any such possible transactions, and (2) hold a separate vote on the specific line item only, from which the interested commissioner can abstain, and for which detailed minutes are made and retained. This would not preclude the interested commissioner from later voting on the overall county budget, but provides a record of the special transaction within the budget process.

2. Army Trailer

This allegation is that Commissioner Iman participated in brokering the trade of a trailer owned by the Ravalli County Road and Bridge Department ("Road Dept") to Don Dunbar, owner of Don's Home Center, and alleges that Commissioner Iman has a relationship to Don's Home Center, raising the question of whether self dealing was involved. There is no legitimate basis to this complaint, as the following shows:

Don's Home Center is a local building supply store, and a regular vendor of supplies to the Road Dept. There is no evidence that Commissioner Iman has any ownership interest in or other financial connection to Don's Home Center. County records reflect that Commissioner Iman has sold real property to Mr. Dunbar over the years, and that Mr & Mrs Iman own a piece of property as tenants in common with Mr & Mrs Dunbar. There is, however, no apparent connection to the business of Don's Home Center.

On April 7, 2005, former Road Dept Supervisor Bill Meisner purchased two ¼ ton trailers from a State of Montana surplus property sale. Ravalli County paid \$300 per trailer and was the owner thereof, although no title documents were ever created for the trailers. These trailers were generally referred to as "Army" trailers, typically used for towing behind an Army-type Jeep. The trailers were never put into use by the Road Dept or any other county department.

In early 2011, a Road Dept employee told Mr. Dunbar about the unused Army trailers parked at the Road Dept shop. Mr. Dunbar reports that this conversation took place because he had been searching for an authentic trailer to pull behind his vintage Jeep that he uses each year to showcase Veterans in the Memorial Day parade in Corvallis.

Mr. Dunbar then contacted Commissioner Iman to ask how he could acquire one of the trailers. Commissioner Iman helped connect Mr. Dunbar with David Ohnstad, the Road Dept Supervisor. Mr Ohnstad determined that the present value of the trailers was less than \$200 each, and filled out the proper paperwork, recommending a private sale of one trailer to Mr Dunbar. Because the Road Dept had regularly purchased various supplies at Don's Home Center for many years, Mr. Dunbar proposed buying one of the ¼ ton trailers from Ravalli County in exchange for \$300 of credit toward Road Dept purchases of items from Don's Home Center. In accord with Section 5 of the Ravalli County Surplus Property Policy, on February 11, 2011 the proposed sale was approved by the county's property manager, Jana Exner. The Road Dept then continued to purchase ordinary supplies from Don's Home Center, exhausting the \$300 credit between February 17, 2011 and April 23, 2011.

Based on the above, I find that any complaint about the conduct of Commissioner Iman is not justified. In this case, Commissioner Iman was not involved in the transaction, and at most facilitated the disposal of surplus property in accord with the Ravalli County Surplus Property Policy. Properly followed, the policy appears to have achieved one of its purposes, recovering appropriate value to the county for otherwise unused property.

3. Snow plow

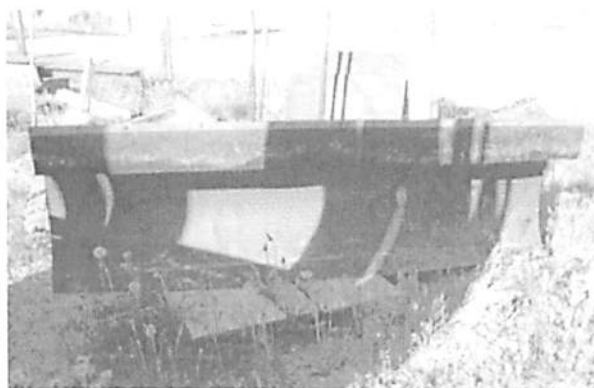
This allegation is that Commissioner Iman removed from the Road Dept lot, and had in his possession for part of January 2012, a county-owned snow plow. The snow plow was not in working order, and was returned by Commissioner Iman to the Road Dept lot on approximately February 1, 2012. We have learned that:

The Ravalli County Park Board is a nine-member board that includes one BCC member. In December 2006, with an eye toward plowing the new Hwy 93 bike paths, park board member William Delaney located and purchased a snow plow in Wyoming for \$250. On December 14, 2006, with park board approval, Ravalli County reimbursed Mr. Delaney \$250, and became the owner of the snow plow.

In short, the plow did not work for the park board's purpose. The plow was too wide (8½' wide) and was too big to mount in any of available vehicle. In addition, it became apparent that various repairs were necessary to make the plow usable, but these repairs were never made. The plow was stored at park board member Gary Leese's house as a matter of convenience. The park board ultimately purchased a mini-truck and plow that was shared between the park board and the Road Dept.

After joining the BCC, Commissioner Iman became the BCC representative on the park board. Commissioner Iman reports that, in the fall of 2011, his interest in the snow plow was renewed because of the need to care for the additional new bike paths opening in Victor, and the mini-truck and plow previously purchased had suffered a breakdown. The following sequence of events then took place, starting in November 2011:

1. Commissioner Iman made a phone call to park board member Gary Leese inquiring about the snow plow. Mr. Leese confirmed that he still had the snow plow stored at his residence. Commissioner Iman informed Mr. Leese that he believed the Road Dept had a truck on which the plow could be mounted and wanted to move the plow to the Road Dept.
2. In late November 2011, Dave Ohnstad (Road Dept) directed Road Dept supervisor Jim Bryan to retrieve the plow from Mr. Leese's property. The snow plow was moved to the road shop by Road Dept employees, where it was unloaded and stored.
3. This piece of equipment was not treated by the Road Dept as inventory. Had it been inventoried, it would have been assigned a unit number, and would have been logged in and out of the road shop.



4. At Commissioner Iman's request, an evaluation of the snow plow was conducted at the road shop. Mr. Bryan participated in that evaluation; he reported that a number of obvious problems were found. These included the need for a hydraulic or electrical lift system; also, the Road Department did not have an appropriate vehicle on which to mount the plow. Employees at the Road Dept reported that they were directed to find an appropriate vehicle and to attempt to repair the plow, and that they formed the impression that Commissioner Iman was insistent on getting the plow into working order.
5. Mr. Bryan received various bids for repair work on the snow plow, which ranged between \$3,500 and \$5,500, not counting a vehicle on which to mount the plow. No repairs were ever undertaken.
6. While located at the Road Dept, the snow plow was at one time briefly moved to the scrap metal recycle bin. Mr. Bryan had the plow removed from the recycle bin as soon as he became aware that it had been placed there. (The scrap metal recycle bin at the road shop is a large bin in which scrap metal is stored for sale to Pacific Recycling. The scrap metal is not for the general public to view, and is not sold or given to the general public.)
7. In January 2012, Mr. Ohnstad told Mr. Bryan that Commissioner Iman would be at the Road Dept to pick up the snow plow. Because of that conversation, Mr. Bryan rigged the plow with a chain and had it ready to load.
8. In mid-January, 2012, Commissioner Iman directed Road Dept employees to load the snow plow onto a flatbed truck from Don's Home Center. The plow was then transported to an arena owned by Commissioner Iman and Mr. Dunbar. (The Don's Home Center truck happened to be at the Road Dept delivering some map cabinets—which are used to store blueprints—for evaluation by Mr. Ohnstad. While there has been some discussion about the map cabinets in these allegations, it appears that the cabinets have no relationship to the plow, other than the timing of the same delivery truck being used to then transport the snow plow.)

9. Mr. Bryan reported a negative contact with Commissioner Iman that occurred on January 23, 2012, the Monday after Mr. Ohnstad was terminated by the BCC. Mr. Bryan reported this contact shortly thereafter to Commissioner Kanenwisher. Then on April 2, 2012 he made a similar report to the Ravalli County Sheriff's Office. This information was again related to Mr. Clarkson as part of this investigation. The substance of these reports was as follows: On January 23, 2012, Commissioner Iman was present at the road shop. Commissioner Iman called Mr. Bryan aside and told him that he "was accountable for the snow plow that Commissioner Iman had taken because he [Mr. Bryan] had placed it in the scrap bin and declared it scrap." Apparently, the manner and content of the conversation was so disturbing to Mr. Bryan that he made the reports described above, reportedly fearing for his job security.
10. Commissioner Iman returned the snow plow to the road shop on approximately February 1, 2012, delivering it on his personal flatbed pick-up. Road Dept employees report that Commissioner Iman appeared unhappy, and reported to the Road Dept employees who helped unload the plow that he had to return the plow until its ownership was determined, or words to that effect.

In Commissioner Iman's response to these allegations, he acknowledges that when the map cabinets were delivered to the Road Dept, he asked Mr. Bryan to load the snow plow onto the Don's Home Center truck. Commissioner Iman states that he then moved the snow plow to his arena "... because there was no decision made who actually owned the park plow since it was not going to be used by the Road Department."

Commissioner Iman further stated that he told Mr. Bryan and another Road Dept employee that: "there were questions about value and county or park ownership of the plow and that would be discussed later. Within days, David Ohnstad was suspended from the Ravalli County road department. No action was taken to establish the need, value or usefulness of the cabinets or the ownership, sale or disposal of the park plow."

From this sequence of events it is apparent that Commissioner Iman had county property in his possession for part of January 2012. However, that limited conduct does not, in and of itself, clearly establish that he violated the statutorily-mandated standards of conduct. To illustrate, the snow plow was not used for Commissioner Iman's private business purposes, which would be a violation of §2-2-121(2)(a), MCA, nor was it used to create an economic benefit to Commissioner Iman or a business in which he was involved, in violation of §2-2-121(2)(e), MCA.

Apparently, Commissioner Iman took delivery of the snowplow because he thought it had been scrapped and was of little value to the County. (Under the County's Surplus Property Policy, surplus property can be junked, but only in compliance with policy procedures.) There is no evidence that he understood that by doing so he might be in violation of the County's Surplus Property Policy; indeed there is no evidence that the Policy was even consulted or considered, which is an obvious oversight.

This investigation has found no evidence that Commissioner Iman intended to or initiated any disciplinary action against Mr. Bryan. His statement to Mr. Bryan appears to have been an expression of frustration arising out of his misapprehension that the snow plow had been scrapped.

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Finally, this investigation has found no evidence of any *quid pro quo* associated with Commissioner Iman's votes in the disciplinary action of Mr. Ohnstad and his taking possession of the snow plow.

I find that the allegation that the above sequence of events violated the standards of conduct required of local government officials is not established.

In order to avoid similar situations in the future, I make the following suggestions:

(1) Any time where interaction between a Commissioner and an employee might be construed as disciplinary, the terms and procedures of the County's employment policies and handbook should be followed. In the absence of other clear policy, a commissioner should contact that employee only with a third party present. For example, an appropriate third person could be another commissioner, a shop steward, that employee's Department Head, or the County Director of Human Resources.

(2) The Ravalli County Surplus Property Policy should be clarified and enforced. While the item in question here clearly is of limited value, it remains property of Ravalli County, whether as a repairable snow plow or scrap metal. One of the express purposes of the policy "is to provide a system of accountability for property owned by Ravalli County and to ensure that property owned by Ravalli County is removed from the County's possession only through proper procedures."